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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/016,325

12/10/2001

Bryan C. Dunkeld

KOP 2001-1

4756

23694 7590 01/17/2007  
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EXAMINER

AUGUSTIN, EVENS J

ART UNIT

PAPER NUMBER

3621

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/016,325	DUNKELD ET AL.	
	Examiner	Art Unit	
	Evans Augustin	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-37 and 55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-37 and 55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/21/02</u> .   | 6) <input type="checkbox"/> Other: _____                          |

***DETAILED ACTIONS***

1. Applicant's election of 22-37 and 55 in the reply filed on 10/26/06 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Status of Claims***

2. Claims 22-37 and 55 have been examined.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Regarding claims 22, 24, 25, 27, 35, and 37, the phrase "and/or" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for

patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 22-37 and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by O’Kane et al. (U.S 20030097299).

As per claims 22-37 and 55, O’Kane et al. discloses an invention that relates to the art of transferring data files between users and, more specifically, to the use of peer to peer processing for this purpose. The invention comprises of the following:

- A P2P network with a plurality of clients (first, second or third) connected to it (par. 56)–  
*Claims 22, 23*
- The client computers include software module that is operable (or executable) to enable these machines to access the network and be capable of consuming system resources provided by other systems connected to the network (aka managing the transfer/download of content) (par. 58) – *Claim 22*
- The aspect of content instantiation is being interpreted by the PTO as being content transfer or download. Accordingly, each time the content is downloaded (first, second or third time), the downloaded content has unique tag (par. 62) – *Claims 22, 24*
- Paragraph 16 of the prior art teaches that users in the art can use cellular phone, Personal Digital Assistant etc, as client devices – *Claim 25*
- Audio files such as MP3 format (par. 96)-*Claim 26*

- The **unique tag** is based on the IP address of the originated and computer and file name to be downloaded (par. 62) – *Claims 27, 55*
- The basics of P2P operation are a user requests a file(s) to be downloaded and the other user or server makes available the file(s) to be downloaded (par. 10-13) – *Claim 28*
- Computer program executable to complete an authorization procedure (par. 90). authorization procedures also enable the digital information to be distributed for a limited number of uses/users, thus enabling per-use fees to be charged for the digital information (par. 50). Implicitly, a transaction account has to set up in order to charge users for content. Additionally, the language in claim 30 does not require steps of “setting up account” to be performed – *Claims 29-30*
- A system that manages that upload and download of files through the P2P network (par. 64) – *Claims 31-32*
- The current invention will allow a person to send a file once and see it **hosted** by dozens or even thousands of potential consumers on a network (par. 39, 52, 56, 57)-*Claim 33*
- Provides payments to the parties involved for performing the hosting function (par. 52, 69) – *Claim 33*
- Requesting or polling for files (par. 64) –*Claim 34*
- Prior art teaches the aspect of digital content which includes among other things, text, graphical images, sound files, and the like (par. 6, 96-101). Books and magazines would fall under the category of text or graphical images – *Claim 35*
- Transfers and downloads must oblige to United States copyright laws such as the Digital Millennium Act of 1998 (par. 31) – *Claim 36*

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- The client device can be an MP3 or video player (par. 112), and it is well established in the art that MP3 player can be part of personal entertainment system –*Claim 37*
- Client computers having memory (par. 56-58) – *Claim 55*

### ***Conclusion***

7. *Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that if the applicant is preparing to respond, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.*
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  - **Adrian et al. (US 20020049760)** - The present invention provides an improved technique for accessing information in a peer-to-peer network. According to specific embodiments of the present invention, each file accessible in the peer-to-peer network

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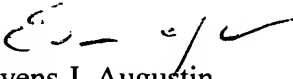
is assigned a respective hash ID or fingerprint ID which is used to describe the contents of that file


- **Razdan (US 20020168082)** - The invention relates to digital signal processing and digital content such as digital audio, video, image, and text data. Specifically, the invention relates to a method for real-time analysis of digital content, real-time remote embedding of imperceptible watermarks using fingerprint meta-data and asymmetric cryptography

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evens Augustin whose telephone number is 571-272-6860. The examiner can normally be reached on Monday thru Friday 8 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571-272-6779.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is 571-272-6584.

  
Evens J. Augustin  
January 3, 2007  
Art Unit 3621

  
**PIERRE EDDY ELISCA**  
**PRIMARY EXAMINER**  
**TECHNOLOGY CENTER 0600**